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April 23, 1996

EX PARTE

BY HAND
William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: CS Docket No. 96-46 -- Open Video Systems, Implementation of Section 302 of the Telecommunications Act of 1996;
CC Docket No. 95-145 -- In the Bell Atlantic Telephone Companies, Revision to Tariff F.C.C. No. 10, Transmittal Nos. 741, 786, Rates, Terms, and Regulations for Video Dialtone Service in Dover Township, New Jersey

Dear Mr. Caton:

On April 22, 1996, Charles D. Ferris of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; Sheila Mahony and Andrea Greenberg, of Rainbow Programming Holdings, Inc; and I met with Meredith Jones, Chief; John E. Logan, Acting Deputy Chief; Gary Laden, Chief - Policy and Rules Division; Larry Walke, Attorney; Rick Chessen, Attorney - Policy and Rules Division; Lynn Crakes, Attorney Advisor; Meryl Icove, Legal Advisor - Office of the Bureau Chief; all of the Cable Services Bureau to discuss Open Video Systems and the applicability of the Commission's program access rules.

In addition, at the request of the Cable Services Bureau, we also discussed terms and conditions of the video dialtone tariff, Bell Atlantic Tariff F.C.C. No. 10, and the impact of these terms and conditions upon the ability of Rainbow to utilize video dialtone to distribute its video programming.

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, two copies of the written documents discussed or distributed are attached for inclusion in the public record in the above-captioned proceedings.

Should you have any questions regarding this matter, please contact me.

Sincerely,

Donna N. Lampert

cc: Meredith Jones
John E. Logan
Gary Laden
Larry Walke
Rick Chessen
Lynn Crakes
Meryl Icove

F1/52134.1

EX PARTE FILING OF RAINBOW PROGRAMMING HOLDINGS, INC. IN CABLE SERVICES DOCKET NO. 96-46

THE PROGRAM ACCESS RULES SHOULD NOT APPLY TO OVS PROGRAMMERS

The Law Does Not Require Nor Did Congress Intend for the Program Access Rules to Apply to Unaffiliated OVS Programmers.

In the 1996 Act, Congress intended to foster competitive symmetry by requiring vertically integrated OVS operators to sell their programming to competing MVPDs, just as satellite cable programming vendors must.

Congress did not intend to undermine OVS by requiring unaffiliated video programmers to sell their programming to their competitors on open video systems.

Application of the Program Access Rules to Unaffiliated Programmers Utilizing OVS is Inconsistent With the OVS Framework.

The bedrock premise of OVS is that all video programmers will have the opportunity to compete on equal terms and will be able to market their own program offerings to consumers.

- Congress intended for market forces to promote diversity and robust competition.

- The Commission correctly recognized that programmers have a right to exercise control over their own product (NPRM at ¶ 41), which applies not only with respect to channel sharing but to the ability of programmers to package and market their product.

Permitting OVS programmers to use the program access rules to secure programming will skew the competitive market by unfairly benefiting favored programmers and will thwart the success of OVS.

Rainbow's experience has shown that it is likely that OVS operators will seek to discriminate against unaffiliated programmers in capacity allocation and then seek to utilize the program access rules to compel programming that can be used by their affiliated and favored programmers. (SNET, US WEST, Bell Atlantic)

Allowing OVS programmers to compel competitors' programming will reduce the incentives for potential new programmers to use OVS since their programming would already be available on the platform.